

REMARKS

In the outstanding Official Action, the Examiner rejected claims 1-20 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-20 of prior U.S. Patent No. 6,421,639, the parent of the present application. The Examiner pointed out that this is a statutory type double patenting rejection. Applicants respectfully traverse the above rejection.

Initially, Applicants wish to make of record an extended telephone interview between Applicants undersigned representative and Examiner Opsasnick conducted on July 2, 2004. During the above-noted interview, Applicants representative pointed out that there was a significant error in the printed claims in the parent of the present application.

In particular, Applicants representative pointed out that U.S. Patent No. 6,421,639 was printed without giving effect to the amendments introduced by the Amendment under 37 C.F.R. § 1.116 filed in the parent application. Applicants representative further pointed out that the Examiner's double patenting rejection was based on such incorrect language of the printed parent patent. However, Applicants representative pointed out that once the correct language of the parent application is considered, a double patenting rejection, either statutory or judicially created (obviousness type) would no longer be appropriate.

During the above-noted interview, the Examiner indicated that he had on that day (i.e., on July 2, 2004) transported the parent application to the Certificate of Correction Branch

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to act on the above-noted Request for Certificate of Correction. Thus, upon granting of the Certificate of Correction, the language of the parent will be corrected and will now be clearly different than the language of the claims in the present application. Accordingly, Applicants respectfully submit that based on the correct language of the parent, no double patenting rejection is appropriate in the present application and Applicants respectfully request withdrawal of the outstanding double patenting rejection in the present application.

To clarify the record in the parent application and thus of the present application, Applicants note that an interview was conducted between Applicants representative and the Examiner on March 29, 2001 in the parent application during which interview an agreement was reached regarding the language of the parent application. Pursuant to the interview, on April 2, 2001 Applicants representative filed an Amendment under 37 C.F.R. § 1.116. In response to this Amendment, Examiner Opsasnich issued a Notice of Allowance on May 1, 2001.

Unfortunately, the claim amendments set forth in the Amendment under 37 C.F.R. § 1.116 filed on April 2, 2001 were not contained in the printed patent which issued on July 16, 2002. Accordingly, on September 30, 2002, Applicants filed a Request for Certificate of Correction to correct the language of the claims of the parent application to include the language of the Amendment under 37 C.F.R. § 1.116. This Request for Certificate of Correction has not yet been acted on.

Applicants further bring to the attention of the Examiner and of the U.S. Patent and Trademark Office a further Certificate of Correction that was filed on October 9, 2002 to correct the data relating to the PCT Application to which the present and parent applications are related. A copy of the above-noted Request for Certificate of Correction of October 9, 2002 was refiled by facsimile on November 5, 2002, however, this Request for Certificate of Correction was also not acted on. Accordingly, Applicants additionally request that the Examiner make efforts to ensure that the Second Request for Certificate of Correction filed in the parent application also be acted on and granted.

During the above-noted interview with Examiner Opsasnick on July 2, 2004, the issue of a judicially created obviousness type double patenting rejection was discussed. During the above-noted interview, Applicants undersigned representative submitted that such a rejection was not appropriate in the present application in view of the patentably distinct language of the claims in the present application as compared to the claims of the parent application (U.S. Patent No. 6,421,639). At the conclusion of the interview, Examiner Opsasnick indicated that he understood Applicants position and that he would update his search and make a determination as to the merits of the application upon receipt of Applicants written response to the outstanding Official Action and based upon the result of the update search.

Accordingly, Applicants respectfully request withdrawal of the outstanding statutory double patenting rejection, granting of both of Applicants Requests for Certificate of Correction filed in the parent application and passage of the present application to issue, in due course. Such action is respectfully requested and is now believed to be appropriate and proper.

The Examiner is respectfully thanked for the courtesy and cooperation exhibited during the above-noted interview as well as for the Examiner's efforts in ensuring that the text of the claims in the parent application is corrected. Moreover, the Examiner's cooperative spirit and constructive approach towards resolving the issues in the present application is also noted with great appreciation.

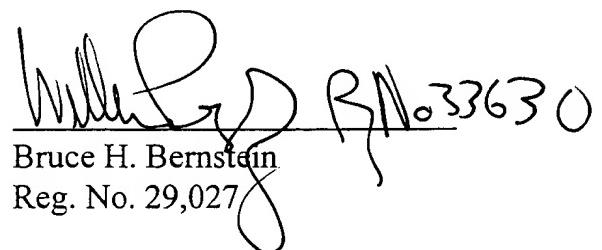
SUMMARY AND CONCLUSION

Applicants have made a sincere effort to place the present application in condition for allowance and believe that they have now done so. Applicants have made of record a telephone interview conducted between Applicants undersigned representative and the Examiner during which the situation in the present application and in the parent application was discussed. Applicants have shown how the Examiner's statutory double patenting rejection is inappropriate and Applicants have further requested action on the two Requests for Certificate of Correction filed in the parent application. Applicants have further discussed the impropriety of any other type of double patenting rejection in the present application and have included a record of the interview conducted in the present application. Accordingly, Applicants have provided a clear evidentiary basis supporting the patentability of all the claims in the present application and respectfully request an indication to such effect in due course.

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Should the Examiner have any questions or comments regarding this Response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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